

CONTENTION ^{Enormous}

GROUND 6 - VIOLATION OF 14TH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES FOR THE TRIAL COURT'S DENIAL OF A WRIT OF MANDATE, IN THAT THE TRIAL COURT LACK JURISDICTION TO DENY THE MOTION, AFTER A PARTIAL GRANTING OF A 1538.5 SUPPRESSION MOTION.

STATEMENT OF FACTS ON OR ABOUT 2-24-05, A 1538.5 SUPPRESSION HEARING WAS GRANTED BY THE HON. JUDGE PRECKEL, ON OR ABOUT 24 MARCH 05, DEFENSE COUNSEL ADAIR MADE A TIMELY MOTION FOR A STAY PENDING REVIEW OF THE MOTION FOR A WRIT OF MANDATE, AS PROSECUTOR MS. MARIA HANNAH VOICED AN OPPOSITION, SHE STATED TO THE COURT THAT THE PROPER WAY TO PROSECUTE A WRIT WOULD BE VIA THE 4TH DISTRICT COURT OF APPEALS, AND THAT THEY WOULD BE THE AUTHORITY TO GRANT OR DENY THE WRIT. THE HON. JUDGE HALGREN, THEN WENT ON AND DENIED THE STAY, WHICH WAS TIMELY WITHIN THE 30 DAY MANDATE TO FILE, AS THE DEFENDANT WAS ENTITLED TO, AS A MATTER OF RIGHT. THE TRIAL COURT PREJUDICIALLY ERRED AND VIOLATED PETITIONER'S 14TH U.S. CONST. AMENDMENT PROCEDURAL DUE PROCESS RIGHTS AND EQUAL PROTECTION AS FEDERALLY GUARANTEED. PETITIONER FURTHER CONTENDS, AND IT IS HIS CONTENTION - THAT THE ED. CATON POLICE DEPARTMENT VIOLATED HIS 14TH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES BY SEIZING HIS PERSON IN HIS REASONABLE EXPECTATION OF PRIVACY IN HIS PRIVATE RESIDENTIAL AREA, WITH UNREASONABLENESS AND INTRUSIVENESS, AND THE WARRANTLESS SEARCH OF HIS HOME, SEIZURE OF HIS PROPERTY, PAPERS, AND PERSONAL EFFECTS ALONG WITH THE WARRANTLESS SEARCH, SEIZURE OF HIS VEHICLE PARKED

1 ON THE CURTILAGE OF HIS HOME IN HIS PRIVATE RESIDENTIAL
2 DESIGNATED PARKING SPACE APPROX. 2 FEET FROM HIS DOORWAY,
3 AS OF WHICH PETITIONER WAS HANDCUFF ARRESTED, WITHOUT
4 PROBABLE CAUSE, AND SECURED IN A PATROL VEHICLE DURING
5 THE UNCONSTITUTIONAL, WARRANTLESS, SEARCH OF HIS HOME AND
6 VEHICLE, THE POLICE ACTION WAS INTRUSIVE. SEE NOW EXHIBIT'D,
7 PAGE 17, RT. EXCERPT 153, LINES 3-20, 25-27, SEE ALSO EXHIBIT'D, PAGE,
8 18, RTE EXCERPT 154, LINES 1-18, 20-23, 26-28-

9 STATEMENT OF FACTS — CONTINUED ON PAGE 3

1 THE COURT: AND THE BASIS FOR THE WRIT IS AS TO WHAT LEGAL ISSUE? MR. ADAIR: THE
2 BASIS FOR THE WRIT IS THE DENIAL OF PART OF A MOTION TO SUPPRESS THAT WAS
3 BROUGHT PRE TRIAL IN JUDGE PRECKEL'S DEPARTMENT. THAT PART OF THE MOTION HE
4 DENIED REQUESTED THAT THE RESULTS OF THE SEARCH OF AN AUTOMOBILE
5 BELONGING TO MY CLIENT AND THE SEARCH OF A BACKPACK (ALLEGED) THAT
6 WAS ON THE TOP OF THE AUTOMOBILE -- HE BASICALLY STATED THAT THERE
7 WAS THE AUTOMOBILE EXCEPTION TO THE REQUIREMENT TO HAVE A WARRANT,
8 AND THEREFORE, DENIED OUR REQUEST TO SUPPRESS THAT EVIDENCE. THE
9 COURT: OKAY, MS HANNAH, ANY RESPONSE TO THAT REQUEST? MS. HANNAH: --
10 YOUR HONOR. I THINK THAT A PROPER WAY TO FILE A WRIT, OF COURSE,
11 IS TO FILE IT WITH THE COURT OF APPEALS, AND THEN THEY
12 WOULD BE THE AUTHORITY THAT WOULD GRANT THE STAY -- MOTION
13 WAS HEARD, I BELIEVE -- AT LEAST THE COURT CAME BACK WITH
14 IT'S RULING -- ON FEBRUARY 28TH. THE COURT: ALL RIGHT. MR. ADAIR:
15 YOUR HONOR, CAN I RESPOND? THE COURT: YES, BUT LET ME CONFIRM THE DATE.
16 IT LOOKS LIKE ~~MS HANNAH~~ ~~IT~~ STARTED ON JANUARY 28TH. THE RULING
17 WAS -- THE COURT: THEN IT CARRIED OVER TO THE FOLLOWING
18 MONDAY IT LOOKS LIKE. MR. ADAIR: IT WAS ACTUALLY CONTINUED INTO
19 LATE FEBRUARY. THE COURT: OH, OKAY. THERE WAS ANOTHER CONTINUANCE,
20 MS. HANNAH: THERE WAS. THE COURT: ALL RIGHT, WELL, LET'S JUST PINPOINT THAT
21 DATE FOR THE RECORD. MS HANNAH: EXCUSE ME, I MISPOKE. IT WAS
22 FEBRUARY 24TH. THE COURT: ALL RIGHT. I SEE THOSE MINUTES, SO THE MOTION
23 WAS DENIED ON FEBRUARY 24TH. MR. ADAIR YOU HAD A BRIEF REPLY? MR. ADAIR:
24 MY CLIENTS ALWAYS REQUESTED THAT I GO TO THE FOURTH DISTRICT
25 ON THIS. IT WAS MY DECISION NOT TO DO IT, AND I THINK HE WOULD
26 WANT IT ON THE RECORD THAT HE FROM PRETTY MUCH DAY ONE HAS
27 REQUESTED A REVIEW. -- SHOULD VINDICATE HIS RIGHTS IN THAT
28 REGARD. THE COURT: ALL RIGHT. WELL, I UNDERSTAND THAT. THE

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IN PROPER.

REQUEST FOR THE STAY IS DENIED. THE MOTION WAS RULED UPON
FEBRUARY 24TH -- ALSO MR. BURTON WILL NOT BE DEPRIVED OF
HIS APPELLATE RIGHTS SHOULD THE CASE PROCEED ADVERSELY TO
HIM AND HE WISHES TO APPEAL ON THOSE ISSUES, HE WILL
CERTAINLY BE ABLE.

CONTENTION - PETITIONER FURTHER CONTENDS THAT THE STATE TRIAL COURT
SPECIFICALLY HON. JUDGE PRECKEL AT THE 1538.5 HEARING ON OR ABOUT ~~JAN 28~~²⁸
05 DENIED PETITIONER HIS RIGHT TO AN IN CAMERA, BOTH HIM AND HIS
COUNSEL MR. ADAIR, AS HE WAS ENTITLED AS A MATTER OF RIGHT.
THE COURT THUS VIOLATED HIS FEDERALLY GUARANTEED
US. CONST. DUE PROCESS CLAUSES OF BOTH THE 6TH AND 14TH
AMENDMENTS - SEE - STATEMENT OF FACTS - SEE EXHIBIT E,
PAGE 3, RTEXCERPT 25 (1538.5 HEARING), LINES 17-28; MR. ADAIR: MY CLIENT
INFORMS ME HE WANTS AN IN CAMERA HEARING. THE COURT: WELL
WHAT HE WANTS AND WHAT HE'S GOING TO GET ARE TWO DIFFERENT THINGS,
THERE'S NO REASON TO GO IN CAMERA. WE'RE GOING TO PROCEED
ON THE RECORD. MR. ADAIR: MY CLIENT ALSO INFORMS ME
HE WOULD LIKE A MARS DEN, THE COURT: NO, WE'RE NOT GOING TO
TAKE UP A MARS DEN MOTION BECAUSE, -- AGAIN I'M VERY FAMILIAR
WITH THE HISTORY OF THIS CASE AND FRANKLY, -- YOU'RE NOW THE
THIRD ATTORNEY OF RECORD, AT ANOTHER TIME HE HAS SOUGHT MARS DENS
SEE EXHIBIT E, PAGE 9, RTEXCERPT 31, LINES 10-12, 14, -21. MR. ADAIR: ALL RIGHT. I THINK THE
LAST ITEM, YOUR HONOR IS THERE ARE CERTAIN ITEM'S OF EVIDENCE THAT I WOULD
LIKE TO LOOK AT PRIOR TO THE HEARING. -- VIEW. THE COURT: YOU'RE GOING TO HAVE
TO BE A LITTLE MORE SPECIFIC THAN THAT. MR. ADAIR: THERE ARE PHOTOGRAPHS
THAT WERE TAKEN OF THE CAR, THE AUTOMOBILE, I DON'T KNOW -- I DON'T HAVE A
LIST OF PHOTOGRAPHS, I DON'T KNOW ANYONE HAS EVER PREPARED, OR AT LEAST IT WAS
NEVER GIVEN TO ME, SO I CAN'T SAY WHAT PHOTOGRAPHS EXIST OR DON'T EXIST.

STATEMENT
OF FACTS

SEE EXHIBIT B, PAGE 23 RTEXT 329 LINES 4-18, 20-23, 27,
MR. ADAIR: WELL, WE'VE REQUESTED PHOTO GRAPHS -- I THINK IT STARTED

8 WITH-- WITH THE PRIOR ATTORNEY ON THE CASE APPROXIMATELY
9 A YEAR AGO REQUESTING PHOTOGRAPHS AND THEY-- THAT WAS IN
10 THE FORM OF, I THINK, A LETTER AND AN ACTUAL FILED MOTION THAT
11 WAS NEVER HEARD, A DISCOVERY MOTION. THAT WAS LAST YEAR. I FOLLOWED
12 UP WITH A LETTER, -- SUPPRESSION MOTION -- ~~CONCERNING~~ ^{240600B}
13 THE COURT: MR. TROCHA, DO YOU HAVE ANYTHING IN RESPONSE?
14 (PROSECUTION'S REBUTTAL ON RECORD) MR. TROCHA: "I DON'T KNOW THE
15 HISTORY OF THE PHOTOGRAPHS OR ANYTHING," THE COURT: OKAY.
16 SEE EXHIBIT "B" PAGES 27, 28, 29, LINES 1-19 ON PAGE 27, LINES 4-28 ON ~~20TH PAGE~~ ^{240600B}
17 PAGE 28, LINE 1-20 ON PAGE 29 - ORDER DENYING DISCOVERY, POST TRIAL BY THE
18 TRIAL COURT: SEE EXHIBIT "B" PAGE 1, RTEXT 177, LINES 1-7. THE COURT:
19 ALL RIGHT. ANY RESPONSE BY THE PEOPLE? MS HANNAH: -- CIRCUMSTANCES
20 AND THE RESULT OF THE INCIDENT THAT OCCURED ON MARCH 19TH OF LAST
21 YEAR. WHETHER THE ISSUE-- THE WHOLE QUESTION OF THE TRIAL IS WHETHER--
22 MR. BURTON IS THE PERSON THAT COMMITTED THE (ALLEGED) CRIME, NOT
23 WHETHER OR NOT MR. THOMAS IS, IN FACT, A (ALLEGED) VICTIM OF A CRIME.
24 SEE EXHIBIT "A" PAGE 82, RTEXT 753, LINES 5-14. (DATED 7-22-05) THE COURT: I
25 HAVE ANOTHER DOCUMENT THAT MR. BURTON HAD SENT TO THE COURT. IT WAS
26 ROUTED THROUGH DEPARTMENT 7, I BELIEVE, BUT IT APPEARS TO BE ANOTHER
27 PRETRIAL OR TRIAL MOTION THAT HE HAD WANTED THE COURT TO CONSIDER.
28 I'LL GIVE THAT TO MR. ADAIR. IF HE THINKS IT HASN'T BEEN ADDRESSED
29 AND HE WISHES TO ADDRESS THAT, HE CAN DO SO AT THE RIGHT TIME.